

COURT OF APPEALS OF THE STATE OF GEORGIA

Maxx McQuay Pritchett v. State

Pritchett v. State · No. A21D0167 · Decided January 25, 2021

SUMMARY

The Georgia Court of Appeals grants Maxx McQuay Pritchett’s application for discretionary appeal to the extent it may challenge his guilty plea, after the trial court granted permission to file an out-of-time appeal. The court holds that the trial court lacked authority to grant an out-of-time discretionary appeal from the revocation of probation and concludes that it lacks jurisdiction over that challenge because the application was not timely filed. Pritchett is directed to file a notice of appeal within 10 days, subject to dismissal if the appeal concerns only probation revocation.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	January 25, 2021
DOCKET	A21D0167
DISPOSITION	other
PROCEDURAL POSTURE	Pritchett filed a pro se application for discretionary appeal after the trial court granted him permission to file an out-of-time appeal. He primarily sought to challenge the revocation of his probation and may also have sought to challenge his guilty plea.
STANDARD OF REVIEW	Jurisdictional review of compliance with the statutory requirements for discretionary appeal.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Maxx McQuay Pritchett v. The State

TOPICS

[appellate jurisdiction](#) [appellate procedure](#) [probation](#) [criminal procedure](#)

PRACTICE AREAS

[criminal appellate procedure](#) [probation revocation](#) [discretionary appeals](#) [guilty pleas](#)

QUESTIONS PRESENTED

1. Whether an order granting permission to file an out-of-time appeal may be appealed directly.
2. Whether a trial court may grant an out-of-time application for discretionary appeal from a probation-revocation order.
3. Whether the Court of Appeals had jurisdiction to consider Pritchett's challenge to the probation revocation when no discretionary application was filed within 30 days of that order.
4. Whether the application should be granted to permit an appeal from Pritchett's guilty plea.

HOLDINGS

1. An order granting an out-of-time appeal may be appealed directly, and a timely discretionary application from that order may be granted under OCGA § 5-6-35 (j).
2. A trial court has no authority to grant an out-of-time application for discretionary appeal from a probation-revocation order.
3. The Court of Appeals lacked jurisdiction to consider the propriety of the probation revocation because Pritchett did not file a discretionary application within 30 days of the revocation order.
4. The application for discretionary appeal was granted insofar as Pritchett had been granted an out-of-time appeal from his guilty plea.

KEY QUOTATIONS

“A defendant granted an out-of-time appeal by the trial court will have 30 days from the grant to file a notice of appeal to the appellate court with subject-matter jurisdiction.”

“The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith.”

FACTUAL BACKGROUND

The trial court revoked Pritchett's probation and later granted him permission to file an out-of-time appeal. Pritchett's pro se application primarily challenged the probation revocation, although the Court of Appeals construed the pleading as potentially also challenging his guilty plea. He did not file a discretionary application within 30 days of the probation-revocation order.

PROCEDURAL HISTORY

On November 11, 2020, the trial court entered an order granting Pritchett permission to file an out-of-time appeal. Pritchett then filed an application for discretionary appeal. The Court of Appeals held that the trial court's out-of-time-appeal order could be appealed directly, but that the trial court lacked authority to grant an out-of-time discretionary appeal from the probation-revocation order. Because Pritchett had not filed a discretionary application within 30 days of the revocation order, the court lacked jurisdiction over that challenge. The court granted the application insofar as Pritchett had been granted an out-of-time appeal from his guilty plea and directed him to file a notice of appeal in the superior court within 10 days.

DISPOSITION

other

REMAND INSTRUCTIONS

Pritchett was given 10 days from the date of the order to file a notice of appeal in the superior court, if he had not already done so. The trial-court clerk was directed to include a copy of the order in the record transmitted to the Court of Appeals.

CASES CITED

- Rowland v. State, 264 Ga. 872, 876 (2) (452 SE2d 756) (1995)
- Siska v. McNeil, 346 Ga. App. 429, 433 (2) (816 SE2d 423) (2018)
- Gable v. State, 290 Ga. 81, 85 (2) (a) (720 SE2d 170) (2011)
- Boyle v. State, 190 Ga. App. 734, 734 (380 SE2d 57) (1989)
- Riley v. Ga. Department of Revenue, 295 Ga. App. 656, 657 (673 SE2d 49) (2009)

OPINION

PER CURIAM.

Court of Appeals of the State of Georgia ATLANTA, _____ January 13, 2021
The Court of Appeals hereby passes the following order: A21D0167. MAXX MCQUAY PRITCHETT v. THE STATE. On November 11, 2020, the trial court entered an order granting Maxx McQuay Pritchett permission to file an out-of-time appeal. Pritchett then filed this pro se application for discretionary appeal in which he primarily challenges the revocation of his probation.

Pritchett may also be challenging his guilty plea.¹ As a threshold matter, we note an order granting an out-of-time appeal may be appealed directly. See Rowland v. State, 264 Ga. 872, 876 (2) (452 SE2d 756) (1995) (“A defendant granted an out-of-time appeal by the trial court will have 30 days from the grant to file a notice of appeal to the appellate court with subject-matter jurisdiction.”).

Under OCGA § 5-6-35 (j), this Court will grant a timely application for discretionary appeal where the order sought to be appealed may be appealed directly. Here, however, it appears Pritchett primarily seeks to appeal the revocation of his probation.

As Pritchett notes, he is required to file an application for discretionary appeal in order to appeal such an order. See OCGA § 5-6-35 (a) (5). But a trial court has no authority to grant an out-of-time application for discretionary appeal.² See 1 Pritchett’s pro se pleading is not entirely clear in this regard, and we have construed the pleading liberally.

See *Siska v. McNeil*, 346 Ga. App. 429, 433 (2) (816 SE2d 423) (2018) (“this Court liberally construes pro se filings”). 2 In violation of this Court’s rules, Pritchett failed to attach a copy of the motion filed below. See Court of Appeals Rule 31 (e) (“The applicant shall include with the application a copy of any... motion that led directly to the order or judgment being appealed[.]”) We thus do not know whether Pritchett sought an out- *Gable v. State*, 290 Ga. 81, 85 (2) (a) (720 SE2d 170) (2011).

Accordingly, the trial court’s grant of an out-of-time appeal does not permit Pritchett to challenge the revocation of his probation. Because Pritchett did not file a discretionary application within 30 days of the revocation order, we lack jurisdiction to consider the propriety of that ruling. See OCGA § 5-6-35 (d) (application for discretionary review must be filed within 30 days of entry of the order or judgment to be appealed); *Boyle v. State*, 190 Ga. App.

734, 734 (380 SE2d 57) (1989) (“The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith.”). Given that Pritchett has been granted an out-of-time appeal from his guilty plea, however, we hereby GRANT Pritchett’s application for discretionary appeal pursuant to OCGA § 5-6-35 (j).3 Pritchett shall have 10 days from the date of this order to file a notice of appeal in the superior court, if he has not already done so.

The clerk of the trial court is DIRECTED to include a copy of this order in the record transmitted to the Court of Appeals. If, upon the docketing of the appeal, it becomes apparent that Pritchett only seeks to challenge the revocation of his probation, the direct appeal will be dismissed as having been improvidently granted. Court of Appeals of the State of Georgia Clerk’s Office, Atlanta, _____ 01/13/2021 I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written., Clerk. of-time appeal from his plea or from the revocation order. 3 “The legislature has instructed that the Appellate Practice Act shall be liberally construed so as to bring about a decision on the merits of every case appealed and to avoid dismissal of any case.” *Riley v. Ga. Department of Revenue*, 295 Ga. App.

656, 657 (673 SE2d 49) (2009).